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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* OSAMU YAMASHITA, RICHARD ORMSON,  
FREDERIC GABIN, DARIOUSH DOWNER,  
and NIGEL LEGG

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Appeal 2007-3706  
Application 10/714,672  
Technology Center 2600

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Decided: March 20, 2008

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Before ANITA PELLMAN GROSS, JOHN A. JEFFERY, and CARLA M.  
KRIVAK, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-5, 7-14, and 16-20. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

## STATEMENT OF THE CASE

Appellants invented a method and apparatus for network acquisition for cellular communications devices. A key aspect of the invention is that a most suitable cell is selected based on signal strength measurements. During the time intervals between measurements for frequencies on a first frequency band, measurements are taken for frequencies of a second band. Such a system efficiently uses otherwise unused time for other measurements.<sup>1</sup>

Claim 1 is illustrative.

1. A method of determining a most suitable cell during network acquisition for a cellular communications device, based on a characteristic of signals received from a plurality of cells, the signals from each cell being provided over a band of frequencies, said method comprising:

taking a series of measurements of said characteristic for each frequency of a first frequency band, so as to obtain an average measurement value of said characteristic for each frequency of said first frequency band, wherein the series of measurements on said first frequency band are equally spaced in time, with equal time intervals therebetween; and

during the time intervals between measurements for said first frequency band, taking a series of measurements of said characteristic for each frequency of a second frequency band.

The Examiner relies on the following prior art references to show unpatentability:

Palenius	US 2004/0058650 A1	Mar. 25, 2004 (eff. filed Sep. 19, 2002)
Cooper	US 2004/0203745 A1	Oct. 14, 2004

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<sup>1</sup> See generally Spec. 2:9-3:28.

Dorsey	US 2004/0224684 A1	(filed Mar. 6, 2002) Nov. 11, 2004
Ramesh	WO 02/37889 A1	(filed May 7, 2003) May 10, 2002

1. Claims 1, 2, 4, 5, 8-11, 13, 14, 17, and 18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ramesh and Palenius.
2. Claims 3 and 12 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ramesh, Palenius, and Cooper.
3. Claims 7, 16, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ramesh, Palenius, and Dorsey.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Briefs<sup>2</sup> and the Answer for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

## OPINION

### *The Obviousness Rejection Over Ramesh and Palenius*

We first consider the Examiner's obviousness rejection of claims 1, 2, 4, 5, 8-11, 13, 14, 17, and 18 over Ramesh and Palenius. In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a

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<sup>2</sup> We refer to the most recent Appeal Brief filed September 2, 2006 and the Reply Brief filed January 30, 2007 throughout this opinion.

factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

Discussing the question of obviousness of a patent that claims a combination of known elements, the Court in *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007) explains:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* [v. *AG Pro, Inc.*, 425 U.S. 273 (1976)] and *Anderson's-Black Rock, Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969)] are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

*KSR*, 127 S. Ct. at 1740. If the claimed subject matter cannot be fairly characterized as involving the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, a holding of obviousness can be based on a showing that “there was an apparent reason to combine the known elements in the fashion claimed.” *Id.*, 127 S. Ct., at 1740-41. Such a showing requires “some articulated reasoning with some rational underpinning to

support the legal conclusion of obviousness. . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*, 127 S. Ct. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

If the Examiner’s burden is met, the burden then shifts to the Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

The Examiner's rejection essentially finds that Ramesh discloses a method of determining a most suitable cell with every claimed feature except for taking a series of measurements for each frequency of a second frequency band during the time intervals between measurements of the first frequency band. The Examiner cites Palenius as teaching this feature and concludes that the claimed invention would have been obvious to one of ordinary skill in the art at the time of the invention in view of these collective teachings (Ans. 4-7).

Regarding representative claim 1,<sup>3</sup> Appellants argue that Ramesh does not select the most suitable *cell*, but rather the most suitable *channel*.

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<sup>3</sup> In the Appeal Brief, Appellants do not separately argue the claims rejected by the Examiner in connection with this obviousness rejection apart from arguing independent claims 1 and 10 together as a group. *See, e.g.*, App. Br. 5-6. Accordingly, we select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellants emphasize that selecting a channel is not equivalent to selecting a cell (App. Br. 5-6; emphasis added). Appellants add that, unlike the claimed invention, Ramesh is based on the concept of carriers and channels and does not analyze two distinct bands of frequencies, as claimed (*id.*).

Appellants also argue that modifying Ramesh with the teachings of Palenius is improper since Ramesh is directed to initially contacting a network, but Palenius is not directed to initial network acquisition (App. Br. 7). In any event, Appellants contend, Palenius merely teaches making measurements on a second frequency -- not a second frequency *band*, as claimed (Reply Br. 5).

The Examiner notes that while Ramesh selects channels, all channels are part of a cell given the fundamental structure of a cellular system (Ans. 10). As such, the Examiner contends, Ramesh selects a cell automatically when selecting a channel within a cell (Ans. 11). The Examiner further notes that Ramesh's power measurements are performed on each carrier in one or more frequency bands of interest (*id.*). The Examiner also maintains that Palenius is properly combinable with Ramesh in view of, among other things, Palenius' cell search capabilities (Ans. 11-12).

The issues before us, then, are:

(1) whether the collective teachings of Ramesh and Palenius teach or suggest the disputed limitations of representative claim 1, namely (a) selecting a most suitable cell, and (b) taking measurements for each frequency of two distinct frequency bands as claimed; and

(2) whether the references are properly combinable.

For the following reasons, we answer “yes” to both of these questions.

Ramesh discloses a channel selection method for a mobile wireless communication system. To this end, a mobile terminal performs multiple power measurements on plural carriers over multiple measurement periods on each carrier. Based on the power measurements, the mobile terminal selects a channel on which to acquire service (Ramesh, Abstract; 12:17-18).

As shown in Figure 1, the wireless communication system 10 comprises multiple mobile terminals 100 and base stations 12. Each base station is located in and serves a geographic region (i.e., a cell) such that there is typically one base station per cell (Ramesh 5:1-5; Fig. 1).

A typical cell plan is shown in Figure 2. As shown in that figure, each cell comprises three sectors (shown as hexagons) typically served by a single base station which is allocated at least three carrier frequency groups, one for each sector. The carrier frequency groups may comprise one or more carrier frequencies (Ramesh; 5:12-18; Fig. 2).

To acquire service with the wireless communication, the mobile terminal selects a channel by performing power measurements on each carrier in one or more frequency bands of interest. After dividing the total number of carriers into groups of carriers, the mobile terminal performs a sequence of power measurements over a predetermined interval of time  $T_m$  for each carrier in the group. Once the last carrier in the group is reached, the mobile terminal returns to the first carrier in the group to repeat the power measurements on each carrier in the group for a predetermined



number of times. After the requisite number of repetitions is completed, the next group of carriers, if any, is measured in a similar fashion.

Once the power measurements for all carriers in all groups are completed, the system then averages the power measurements with the highest values to obtain an average maximum power value for each carrier frequency. The carriers with the highest average maximum power value are selected as candidate carriers. Ultimately, the mobile terminal selects one carrier from the candidate carriers on which to acquire service (Ramesh, 8:20-9:10; 12:14-14:12; Fig. 7).

A key aspect of this procedure is that the mobile terminal *interleaves* power measurements on different carriers within a carrier group to reduce the overall measurement time (Ramesh, 9:11-13). This process is illustrated for a multiframe<sup>4</sup> with three carrier frequencies in Figures 5A through 5C. The nine shaded time slots in these figures represent the measurement periods  $T_m$  during which power is measured on each carrier. Significantly, the measurement periods  $T_m$  for Carrier 1 in Figure 5A do not overlap the corresponding measurement periods for Carriers 2 and 3 shown in Figures 5B and 5C respectively.<sup>5</sup>

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<sup>4</sup> Each carrier frequency is subdivided into frames, and each frame is further subdivided into time slots. The multiframe structure is based on a matrix where the columns represent time slots and the rows represent succeeding frames in the multiframe. *See generally* Ramesh 5:19-24 and 6:18-21.

<sup>5</sup> That is, the nine shaded time slots depicting the measurement periods for Carrier 1 shown in Figure 5A (e.g., extending from Row 4, Column 2 to Row 5, Column 2) do not overlap the corresponding nine time slots for the measurement periods of Carrier 2 shown in Figure 5B (e.g., extending from

Based on this functionality, although Ramesh pertains to channel selection, we agree with the Examiner that Ramesh nonetheless suggests selecting a most suitable cell as well. First, as we noted previously, each cell in Ramesh is served by one base station and comprises three sectors with at least three carrier groups per sector. Since the channel selection procedure is performed over multiple carrier groups as noted above, skilled artisans would certainly recognize that such carrier groups could be associated with different cells. Indeed, nothing in the channel selection procedure described in connection with Figure 7 of Ramesh precludes such a possibility. In such a case, selecting the most suitable channel based on power measurements among carrier groups spanning different cells would therefore be tantamount to selecting the most suitable cell.

Furthermore, given the layout of cells shown in the cell plan of Figure 2 of Ramesh, selecting a channel in this fashion would, in our view, only enhance the functionality of Ramesh's system. As the Examiner indicates (Ans. 11), the mobile terminal could be located at the edge of a cell and therefore could be more appropriately serviced by the adjacent cell by virtue of, among other things, its proximity to the adjacent cell and its base station 12 (and potentially higher power measurements).<sup>6</sup> Therefore, in such a case,

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Row 5, Column 3 to Row 6, Column 3). Likewise, these measurement periods do not overlap with the corresponding measurement periods of Carrier 3 shown in Figure 5C (e.g., extending from Row 6, Column 4 to Row 7, Column 4).

<sup>6</sup> We further note that factors other than proximity could affect signal strength from a mobile terminal to a respective cell's base station including, among other things, environmental factors affecting radio wave propagation.

selecting the most suitable channel associated with an adjacent cell would, at a minimum, enhance communication for users located at or near the edge of a cell.

We also find that Ramesh amply suggests performing measurements on frequencies in distinct frequency bands as claimed. Significantly, Ramesh expressly states that power is measured on each carrier *in one or more frequency bands of interest* (Ramesh, 8:20-21; emphasis added). While the reference does not further detail the specifics of these frequency bands, skilled artisans would nonetheless glean from this teaching that not only the carrier frequencies within a group could be within different bands (e.g., Carriers 1 through 3 represented by Figures 5A through 5C respectively), but also the carrier groups themselves could represent different frequency bands. As such, power measurements performed on Carriers 2 and 3 (in different frequency bands) in accordance with the sequential power measurement procedure of Figure 7 would be between measurements for Carrier 1 -- a carrier that could be in yet another frequency band.

Although the Examiner's reliance on Palenius is cumulative to the teachings of Ramesh, we nonetheless find that the reference's teachings pertaining to a cell search procedure (Palenius, ¶¶ 0008, 0014, 0033) would have been readily combinable with those of Ramesh. Clearly, Palenius' teachings pertaining to interleaving measurements on different frequencies in connection with cell searches are relevant to Ramesh's system which also uses interleaved measurements in connection with a channel selection in a

cellular system. Appellants' arguments with respect to Palenius' measurements being on different frequencies and not frequency bands (Reply Br. 5) is unavailing as Ramesh amply suggests such a feature as we noted previously.

Since we find that Ramesh amply suggests all limitations of representative claim 1, Appellants have not persuasively rebutted the Examiner's *prima facie* case of obviousness based on the collective teachings of the cited references. The Examiner's rejection of representative claim 1 is therefore sustained.

We will also sustain the Examiner's rejection of claims 2, 4, 5, 8-11, 13, 14, 17, and 18 which fall with representative claim 1. Although Appellants nominally argue the two distinct units recited in independent claim 10 (Reply Br. 5), this argument was not timely raised in the Appeal Brief, but rather was raised for the first time in the Reply Brief. As such, this argument is waived.<sup>7</sup> In any event, given the scope and breadth of the recited "unit" limitations, the respective tuned circuits in Ramesh used to distinguish one carrier frequency over another amply suggest these limitations.

Likewise, Appellants' argument with respect to dependent claims 5 and 14 (Reply Br. 6) is waived since it, too, was raised for the first time in the Reply Brief.<sup>8</sup> Nevertheless, Appellants' argument does not persuasively

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<sup>7</sup> See *Optivus Tech., Inc. v. Ion Beam Applications S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) ("[A]n issue not raised by an appellant in its opening brief ... is waived.") (citations and quotation marks omitted).

<sup>8</sup> See *id.*

rebut the Examiner's prima facie case of obviousness for these claims (Ans. 5, 7). We add that selecting a particular duration (e.g., 0.5 second) for a given interval in Ramesh's procedure would have been well within the level of ordinarily skilled artisans.

*The Obviousness Rejection Over Ramesh, Palenius, and Cooper*

We now consider the Examiner's obviousness rejection of claims 3 and 12 over Ramesh, Palenius, and Cooper. The Examiner cites Cooper for teaching characteristics derived from signal strength include determining a signal to noise (S/N) ratio (Ans. 8, 12).

Appellants argue that Cooper is not properly combinable with Ramesh in view of its different purpose of selecting which communication system to acquire. Appellants add that an S/N ratio does not meet the plain meaning of a "derivative" of the signal strength since the term "derivative" means a rate of change (App. Br. 7-8).

At the outset, we note that Appellants do not dispute the Examiner's findings regarding the teachings of Cooper with respect to determining an S/N ratio based on received signal strength. Therefore, the issue before us is whether such a determination suggests determining a "derivative" of the signal strength under the term's broadest reasonable interpretation, and whether such a teaching from Cooper would have been reasonably combinable with the other cited references.

To interpret the term "derivative," we first turn to Appellants' Specification for guidance. At best, however, the Specification merely

mentions the term in passing and thus falls well short of specifically defining the term so as to impart a special meaning to the term.<sup>9</sup> Accordingly, we interpret the term with its plain meaning (i.e., the ordinary and customary meaning given to the term by those of ordinary skill in the art).<sup>10</sup>

The term “derivative” is defined as “[s]omething derived.”<sup>11</sup> And “derive” is defined, in pertinent part, as “1. To obtain or receive from a source. 2. To arrive at by reasoning; deduce or infer: *derive a conclusion from facts*.”<sup>12</sup> Although we acknowledge the *mathematical* definition of “derivative” involves a rate of change, nothing on the record before us mandates such a limited definition to the exclusion of more general definitions.

Certainly, skilled artisans would have recognized that the S/N ratio discussed in Paragraph 0011 of Cooper would have been based on, in significant part, measured signal strength. Thus, for a given noise value, the

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<sup>9</sup> According to the Specification, “[t]he said characteristic comprises signal strength, *or a derivative thereof*, and the number of measurements in the series required so as to arrive at the average value [*sic* - which] can be in the region of five” (Spec. 3:5-7; emphasis added).

<sup>10</sup> See *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003); see also *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc).

<sup>11</sup> The American Heritage® Dictionary of the English Language, 4th ed., 2000, available at <http://www.bartleby.com/61/12/D0151200.html> (last visited Mar. 6, 2008).

<sup>12</sup> *Id.* (available at <http://www.bartleby.com/61/13/D0151300.html>) (last visited Mar 6, 2008).

S/N would be “derived” from the received signal strength, giving the term “derived” its broadest reasonable interpretation.

Moreover, we find the teachings of Cooper are reasonably combinable with the other cited prior art references since Cooper pertains to, among other things, using a mobile station to transmit signals on a given channel and analyze the received signals as part of a communications system selection procedure (Cooper, ¶¶ 0011-12). Since Ramesh likewise uses signal strength measurements in the channel selection procedure, skilled artisans could certainly incorporate the teachings of Cooper in Ramesh to determine an S/N ratio from the received signal strength measurements to provide additional data regarding a given channel’s transmission capabilities. Such a feature, in our view, is tantamount to the predictable use of prior art elements according to their established functions -- an obvious improvement. *See KSR*, 127 S. Ct. at 1740.

For the foregoing reasons, we will sustain the Examiner’s rejection of claims 3 and 12.

*The Obviousness Rejection Over Ramesh, Palenius, and Dorsey*

Regarding the Examiner’s rejection of claims 7, 16, 19, and 20 based on Ramesh, Palenius, and Dorsey, Appellants argue that Dorsey does not qualify as prior art since its U.S. filing date (May 7, 2003) is later than the foreign priority date (Nov. 19, 2002) of the present application (App. Br. 8). The Examiner, however, maintains that the submitted priority document (a German application (DE 10314 694.6)) does not match the underlying

foreign application (UK 0226980.1) for which priority is claimed and, as a result, priority under § 119(b) was not perfected (Ans. 12-13).

Appellants respond that not only did they *not* submit the German document, they in fact submitted the correct British priority document to the USPTO on July 12, 2004, but the agency lost the document -- a copy of which Appellants did not retain (apart from a copy of the ribboned cover page) (App. Br. 8). As evidence of this submission, Appellants provide (1) a copy of the cover page used for the priority document submission, and (2) a copy of the ribboned cover page of the priority document itself. Appellants also provide a copy of the uncertified published application (GB 2395622 A) that is said to correspond to the now-unavailable priority document (App. Br. 8-9; Ev. App.).<sup>13</sup>

Although the evidence before us is hardly a model of clarity, based on the totality of the evidence before us, we nonetheless find that Appellants have reasonably shown (1) a UK priority document (UK Application No. 0226980.1) corresponding to the present application was submitted to the

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<sup>13</sup> The Examiner refused to enter the copy of the published application corresponding to the UK priority document since Appellants allegedly failed to provide good and sufficient reasons why it was not provided earlier (Ans. 13-14). We disagree with this contention as we find ample justification for Appellants to submit this document as evidence accompanying the Brief in view of the unusual circumstances pertaining to the foreign priority issue in this appeal. For the reasons indicated, *infra*, we agree with Appellants (Reply Br. 8) that the correct priority document was timely submitted to the USPTO and submitting corroborating evidence in the Brief to support this position is reasonable.



USPTO on July 12, 2004, and (2) a substantial likelihood that the agency misplaced the document.

At the outset, we note that when this foreign priority issue arose prior to this appeal, Appellants twice submitted the same copy of the ribboned cover page of the priority document along with its corresponding cover page as provided in the Evidence Appendix.<sup>14</sup> Furthermore, a copy of the post card filing receipt stamped “Jul. 12, 2004” accompanied both of those submissions. On that receipt, the box labeled “Priority Document(s)” is selected (i.e., marked with an “X”) and a handwritten notation “1 (Fig 1.)” appears directly below this entry. Although it is unclear to us what this handwritten annotation means, we presume that it indicates that only one priority document was received and it contained only a single figure -- a fact consistent with the present application which likewise contains only a single figure.

Secondly, although the ribboned copy of the UK priority document does not bear the application number, nor does it show that actual filing date of the application,<sup>15</sup> we nonetheless presume that it corresponds to the certified copy of the foreign priority document.

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<sup>14</sup> See Amendment filed Nov. 16, 2005; *see also* Amendment After Final Rejection filed Apr. 4, 2006.

<sup>15</sup> The copy of the ribboned page is dated September 18, 2003. The filing date of the UK application, however, is November 19, 2002. Although these dates do not match, we presume that the date on the ribboned page is the date of *certification* by the UK Patent Office -- not the date of *filing*.

Third, the cover page for the priority document submission is dated July 12, 2004. This cover page unambiguously identifies the corresponding UK priority document on which priority is based by application number. Although this cover page erroneously indicates that UK application was filed on November 19, 2003<sup>16</sup> which is after the filing date of the present application, Appellants readily acknowledged this error.<sup>16</sup> We consider this error harmless as it clearly reflects a typographical error since the totality of the evidence before us indicates that the year of the filing date was clearly intended to be 2002 -- not 2003.

Fourth, while it is unclear why a German document is present in the application file, even a cursory inspection of this document reveals it has nothing to do with the present application. As such, we agree with Appellants (Reply Br. 8-9) that there simply would have been no rational basis to file this German document in connection with the present application. Rather, based on the evidence before us, the most reasonable explanation for this inconsistency would be that the agency likely (1) misplaced and/or misfiled the submitted British document, and (2) mistakenly entered a copy of the incorrect German application in the file of the present application.

While it is unfortunate that a backup copy of the entire priority document was not retained -- a circumstance that is itself unusual -- we

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<sup>16</sup> See Amendment filed Nov. 16, 2005, at 9 (acknowledging the erroneous application date as “clearly incorrect on its face, since that date is a day after the filing date of the present United States application.”); *see also* Amendment After Final Rejection filed Apr. 4, 2006, at 2 (same).

nonetheless find there is sufficient evidence tending to show that this situation was caused by the agency -- not Appellants -- and that such a circumstance should not penalize Appellants' ability to perfect their priority date under § 119(d). Moreover, the evidence reflects that Appellants attempted to cure this agency-created defect by timely submitting, in good faith, all relevant evidence pertaining to the submission to prove that they submitted the proper UK foreign priority document on July 12, 2004.

Based on the totality of the evidence before us, we will therefore presume for purposes of this appeal that such a submission was made and that foreign priority under § 119(d) was perfected. That the content of the published application (GB 2395622 A) in the Evidence Appendix corresponds to that of the present application and bears the same application number of the submitted UK priority application only reinforces this conclusion.<sup>17</sup>

Since the foreign priority date (Nov. 19, 2002) of the present application is before the U.S. filing date of the Dorsey reference (May 7, 2003), and since we presume that Appellants constructively perfected their foreign priority claim under § 119(d), the Dorsey reference does not qualify

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<sup>17</sup> In fact, the MPEP does not strictly require the actual application as filed as evidence of a foreign priority document. Rather, it may be permissible to file other documents, such as foreign patents, in lieu of the actual application so long as the requisite criteria are met. For example, ordinarily a copy of a foreign patent as issued is not sufficient as a foreign priority document. However, a copy of the printed specification and drawings *of the foreign patent* is sufficient if the certification indicates that it corresponds to the application as filed. See MPEP § 201.14(b), Rev. 5, Aug. 2006.

as prior art. Accordingly, the rejection of claims 7, 16, 19, and 20 which relies on Dorsey cannot be sustained.

#### DECISION

We have sustained the Examiner's rejections with respect to claims 1-5, 8-14, 17, and 18. We have not, however, sustained the Examiner's rejection with respect to claims 7, 16, 19, and 20. Therefore, the Examiner's decision rejecting claims 1-5, 7-14, and 16-20 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2007-3706  
Application 10/714,672

AFFIRMED-IN-PART

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